

MINUTES

WARRICK COUNTY AREA PLAN COMMISSION

Regular meeting held in Commissioners Meeting Room,

Third Floor, Historic Court House,

Boonville, IN

Monday, September 11, 2017, 6:00 PM

PLEDGE OF ALLEGIANCE: A moment of silence was held followed by the Pledge of Allegiance.

MEMBERS PRESENT: Guy Gentry, President; Bill Byers, Bob Johnson, Jeff Valiant and Jeff Willis.

Also present were Morrie Doll, Attorney, Sherri Rector, Executive Director, Molly Barnhill, staff and Kim Kaiser, staff.

MEMBERS ABSENT: David Hachmeister and Amanda Mosiman.

MINUTES: Upon a motion by Jeff Valiant and seconded by Bob Johnson, the Minutes from the last regular meeting held August 14, 2017 were approved as circulated.

The President explained the Rules of Procedure to the audience.

REZONING PETITIONS:

PC-R-17-11 – Petition of Maken Corp., Danny Ubelhor, Pres. OWNER: Same To rezone 13.65 acres located on the S side of Oak Grove Rd. approximately 0' S of the intersection formed by Oak Grove Rd. & Park Blvd., from "M-2" General Industrial to "R-1" One Family Dwelling. Boon Twp & Ohio Twp. *Complete legal on file. Advertised in the Standard August 31, 2017.*

Jim Morley Jr. with Morley and Danny Ubelhor (in the audience) were present.

The President called for a staff report.

Mrs. Rector stated we have all of the return receipts except one from Boehne Camp LLC but we do have the white pay receipt and they were all mailed to the correct addresses and before the 21 day deadline. She said the proposed R-1 has a minimum lot size of 6,000 square feet and a minimum width of 60' at the building line. She said the Comprehensive Plan projects the area to be moderate to high density residential. She said the existing land use is vacant. She said the surrounding zoning and land use property to the north is zoned "R-1" One Family Dwelling and is Berkshire Subdivision; property to the east, west and south is zoned "M-2" General Industrial

with some vacant lots and some businesses. She said there is no flood plain on the property. She said the access on the property is Oak Grove Rd and some of the lots are off of Prospect Dr. She said it is a 39 lot residential subdivision. She said it is in compliance with the Subdivision Control Ordinance they do have a primary plat on this agenda to go with this zoning but it is not a PUD.

The President asked if there was anything to add to this staff report.

Jim Morley Jr. stated this is part of the large piece of property that Maken Corp. has owned for years that was zoned Industrial many many years ago. He said as demand edicts a lot of it is being changed to residential and so this is just a piece of it being changed to residential.

The President asked for any questions from the Board Members. He asked if there were any plans for any sort of buffer between the Residential and the Industrial Park.

Jim Morley Jr. stated that the lots that back up against the industrial portion we have tried to keep them a little deeper and there is also a drainage easement on the industrial side. He said there is some ditch work that is going to be done, that was approved by the Drainage Board that will try to keep the Industrial area at bay.

The President asked for any more questions from the Board. He asked for remonstrators for or against the project.

Ascertaining no more questions from the Board the President called for a motion on the rezoning.

Bob Johnson made a motion to give a positive recommendation to the County Commissioners for PC-R-17-11. The motion was seconded by Jeff Valiant and unanimously carried.

Jim Morley Jr. said he has the next one also and he wants to ask about the expedited process. He said if that is possible could he come back and ask about this one so he can do them at the same meeting.

The President said you definitely want the other one first so you want to wait until then.

Jim Morley Jr. said that's fine. He said however I need to do that conversation.

The President said yes we will go ahead with the next one then we will address both of them at the same time.

Jim Morley Jr. said thank you.

PC-R-17-12 – Petition of Maken Corp., Danny Ubelhor, Pres. OWNER: Maken Corp., Danny Ubelhor, Pres. & RJB Properties, LLC by Jeanette Belmonte, Sole Mgr. To rezone 2.5 acres located on the S side of Park Place Dr. approximately 0' NE of the intersection formed

by Park Place Dr. & High Pointe Dr. being Lots 2-5 in High Pointe Centre North Sec 1D from “C-4” General Commercial to PUD/C-4 Planned Unit Development consisting of “C-4” General Commercial. Ohio Twp. *Advertised in the Standard August 31, 2017.*

Mrs. Rector stated that you may want to go ahead and do the PP-17-15 also since with the PUD zoning you have to have a plat on file. She said they will have to be voted on separately.

PP-17-15- Park Place Phase V PUD by Maken Corp., Danny Ubelhor, Pres. OWNER: Maken Corp., Danny Ubelhor, Pres. & RJB Properties, LLC by Jeanette Belmonte, Sole Mgr. 2.5 acres located on the S side of Park Place Dr. approximately 0’ NE of the intersection formed by Park Place Dr. & High Pointe Dr. being a replat of Lots 2-5 in High Pointe Centre North Sec 1D, Ohio Twp. *Advertised in the Standard August 31, 2017.*

The President called for a staff report.

Mrs. Rector said we have all of the return receipts. She said on a PUD there is no minimum lot size. She said the Comprehensive Plan projects the area to be commercial and it is presently vacant. She said the surrounding property land use to the north is zoned “C-4” with apartment buildings. She said the property to the west is zoned “C-4” with a commercial business and the property to the south is zoned “C-4” and is vacant. She said the property to the east is zoned “C-3”. She said there is no flood plain. She said the access is from Park Place Dr. She said it is a proposed apartment complex with 47 units. She said it is in compliance with the zoning. She said they have filed the primary plat along with the zoning that was also on the agenda.

Mrs. Rector said then the plat and the notices were all mailed together and we have them all. She stated the property is currently zoned “C-4” and they are requesting the PUD with the “C-4”. She said there is no flood plain on the property and there is 1 lot. She said the Commissioner’s approved today that there were no improvements required to Park Place Dr. She said the County Engineer has already approved 2 entrances for this project on the north end of the lot. She said they were not required to have any drainage plans. She asked is it Newburgh Sewer?

Jim Morley Jr. said yes.

Mrs. Rector said she thinks we still need that letter for Newburgh Sewer. She said we don’t have it but she knew he had requested it.

Jim Morley Jr. said OK he will chase it down.

Mrs. Rector stated we have the letter from Chandler for the water. She said the proposed development is a senior living apartment community. She said they are requesting a waiver from the Warrick County Zoning Ordinance which requires 2 parking spaces per dwelling unit. She said there will be 47 single-bedroom units which would require 94 parking spaces and they are asking to lessen that requirement to 85 spaces which this Board has approved for the previous

complexes which are across the street. She said the plat is in technical conformity to the subdivision and the zoning ordinance.

The President asked if there was anything to add to the staff report.

Jim Morley Jr. said no.

The President asked if there were any questions from the Board Members. He said it looks like the entrances are lined up with the ones right across the...

Jim Morley Jr. said yes that was the request of the County Engineers Office.

The President asked if there were any questions from the Board.

The President asked if there were any remonstrators for or against this project.

Mrs. Rector said she just wants to make it clear that Danny Ubelhor, owner, is here in the audience.

Ascertaining no more questions from the Board the President called for a motion on the rezoning.

Jeff Valiant made a motion to give a positive recommendation with the waiver on the parking to 85 spaces to the County Commissioners for PC-R-17-12. The motion was seconded by Bob Johnson and unanimously carried.

The President said the next item would be the primary plat.

Jeff Valiant made a motion to approve PP-17-15. The motion was seconded by Bob Johnson and unanimously carried.

Jim Morley Jr. said if he can ask on this rezoning my client has the desire to get the dirt work done yet this fall and to get the building permits pulled in order to do that he has to record the secondary plat and to record the secondary plat he has to have the rezoning done. He said is there any way we could go through an expedited process and have the rezoning heard 2 weeks from tonight at the Commissioner's meeting versus waiting the standard 4 weeks.

Mrs. Rector said she doesn't have a problem with that since there are no remonstrators and it hasn't been lengthy.

The President said the minutes would be the only thing and you can do that.

Mrs. Rector said yes.

The President called for a motion.

Jeff Valiant made a motion to approve the expedition. The motion was seconded by Bob Johnson and unanimously carried.

Jim Morley Jr. said given that my client is also the rezoning before this one and to keep him from having to come to two meetings is there a way to do the previous one with this one.

Mrs. Rector said these will be Monday, September 25, 2017 at 4:00 p.m. She said she didn't have a problem unless we just get so slammed because we by law have to get a certified zoning report to the Commissioner's before 10 days and you know all of the construction that is going on but we should be able to.

Jim Morley Jr. said he would take that deal.

The President said so we need a motion contingent on the minutes being done and a certified copy.

Jeff Valiant said so moved. The motion was seconded by Jeff Willis and unanimously carried.

PC-R-17-13- Petition of Delores Joan Freudenberg Trustee of the Delores Joan Freudenberg Revocable Trust. OWNER: Same To rezone 1.08 acres located on the S side of SR 662 approximately 350' E of the intersection formed by SR 662 & Morningside Dr. from "C-1" Neighborhood Commercial to "C-4" General Commercial. Ohio Twp. *Complete legal on file. Advertised in the Standard August 31, 2017.*

James Biggerstaff and Deloris J. Freudenberg were present.

James Biggerstaff said the person interested in buying the property, Mr. Reed, is here also.

The President called for a staff report.

Mrs. Rector said we have all of the certified receipts. She said there is no minimum lot size for a "C-4" zoning. She said the Comprehensive Plan projects for the area to be commercial. She said the existing land use was she believes the old Homestead Restaurant but it is vacant now.

Deloris Freudenberg said yes that is correct.

Mrs. Rector said the surrounding zoning and land use; most of the surrounding properties are zoned residential with single family dwellings. She said there are two parcels to the north zoned "C-3" Highway Commercial and one has a single family dwelling and the other was zoned for opened air car sales. She said the entire eastern half of this property lies in the "A" Flood Plain which means the base flood elevations have not been determined. She said there are also two legal drains along the east and south property lines and they have a 75' right of entry from the top of bank. She said the existing building is in the flood plain and the legal drain. She said so any improvements or any additions to the existing buildings is going to have to go through and

get DNR approval and base flood elevations determined and nothing can be allowed in the legal drain. She said if they want a reduction of the legal drain they would have to go to the Drainage Board to get that done. She said the access is off of SR 662. She said the stated use on the application is an auction barn. She said it is in compliance.

The President asked if there was anything to add to the staff report.

James Biggerstaff said yes, Mr. Reed's plans to have auctions on... he will explain that.

John Reed said that the auctions would be on Saturday evening's maybe twice a month if business goes well. He said maybe twice a month like maybe the first and third Saturdays having an auction, a consignment type auction. He said being a school teacher, making short work of it, I also coach an archery team at my school here in Warrick County. He said archery is growing large and we don't have room to practice our archery. I would also like to have my archery team come in and practice as well. He said the archery is inside not outside shooting it is all contained inside the building.

James Biggerstaff said he had explained to Mr. Reed being the whole east side of it is in the flood plain and also Newburgh has a sewer easement so he has an idea to put an addition to the west and directly to the west Deloris owns that property too. He said so that would be the only location they could locate any additions to the building due to setback on the flood plain on Willow Pond and also Newburgh has a sewer line right through the middle of it.

John Reed said and he has also started the process of getting a LOMA and he has learned a lot about this of course. He said yes he understands the one building right now that half of it is but it's either all in or so he is getting the DNR and the LOMA and going through Indianapolis as well. He said he still has to do a little homework on the side so thank you.

The President asked if there are any questions from the Board Members.

The President asked if there are any remonstrators for or against the project.

David Huck said he lives adjacent to the homestead property to the east. He said his wife and he have lived there about twenty-two years. He said we raised our family there. He said we went through the tornado and rebuilt there. He said we know Charles and Deloris, good folks, good neighbors. He said however we are opposed to this rezoning out of concern for property values and down the road with the "C-4" zoning it could be literally anything. He said it could have a profound effect on our quality of life as well. He said we respectfully ask that you decline this.

Jeff Willis asked if there is presently any kind of fence through there to separate your property and their property.

David Huck said no there is no fence.

The President asked if there were any other remonstrators for or against the project.

James Biggerstaff said to the extreme east is a ditch and it is well grown up so the visibility is not very much there but everything is visible.

John Reed said the landowner to the south of this property is my sister, Regina, and brother-in-law, Mark Jones. He said they just built their house right behind this piece of property and she didn't know she had to show up here or anything but they are in favor but that is just me saying that word for them but they actually just built a house right behind there a couple of years ago.

The President asked on the auction part of this is it all going to be outside or what are you looking at or what are you looking at selling at the auction.

John Reed said inside definitely most everything will be inside. He said he doesn't see much at all going outside because he definitely doesn't want to trash up the place. He said he actually just lives a quarter of a mile down on Epworth there in the neighborhood too. He said he definitely sees the concern he has.

Mrs. Rector asked did you consider... are these the only two things specific that you want to do there.

John Reed said yes ma'am.

Mrs. Rector said she doesn't want to speak for the Board but if they are looking at this would you have any objection to amending your ordinance to one with a use and development commitment that would limit the zoning to just that use but that is up to the owners right now.

Charles Freudenberg said ma'am we are just interested in selling the property that depends on what this gentleman needs and his cost. He said we need to sell it and as far as our neighbors are concerned for years we had a restaurant there until the tornado took it away and now we are of an age that we need to sell it.

James Biggerstaff said he doesn't think Mr. Reed has any objections.

John Reed said no he didn't.

The President said that just gives a little extra protection to...

John Reed said he totally understands that.

Mrs. Rector said since it is all residential right up next to you is why she brought it up. She said they can bring in a new one and record it before it goes to the Commissioners. She said I'm just making a suggestion; they may not care if it doesn't have one. She said they would amend... on

the rezoning ordinance there is two different types, one that just allows anything that goes into that zoning and anything lesser to go in...

Bill Byers said but that would still be "C-4".

Mrs. Rector said it would still be "C-4" but they would fill out a new one of these that has a number on there and says limited to those uses and that's recorded. She said so if he wanted to put something else there or sell it to someone else in the future they would have to apply to rezone it again and come back to you to change the use.

Bill Byers asked if they could accomplish that tonight.

Mrs. Rector said yes you can make that as a motion and they would have to type up a new ordinance before it gets to the Commissioners.

The President said but it has to be initiated from them to ask that we do that.

Mrs. Rector said yes.

Jim Biggerstaff said so it would be a use and development based on his use.

Charles Freudenberg said we just want to sell it.

James Biggerstaff said that it looks like all is in agreement here that is the avenue they would like to proceed with. He said the "C-4" with the use and development commitment.

The President said limited to those two primary uses.

James Biggerstaff said yes.

Bob Johnson said will the neighbors be ok with that.

The President said he doesn't know. He said to the remonstrators does that help satisfy you a little bit. He said it was a pretty thriving restaurant back in its day.

David Huck said yes it was there for many many years before we were there so we knew what we were moving into and like he said these folks are good people but my concern is it just opens it up for the future even with a use and development commitment it is a "C-4" zoning.

The President said but only for the uses he's developing so if he sells it or anything else they would have to come back in.

David Huck said he understands that but he would think it would be much easier to move from "C-4" with use and development to whatever the next use would be so he is still opposed.

The President said ok so we have a request on the floor to amend the original for a use and development to be added.

The President called for a motion to accept that amendment.

Bill Byers made a motion to accept the amendment for PC-R-17-13. The motion was seconded by Jeff Valiant and carried unanimously.

The President asked if there was any other discussion.

Jeff Willis said you said Saturday evenings or afternoon.

John Reed said yes he's thinking 6-9 but this is all just a dream with nothing on paper but he would have to have it open a couple of days just so people could bring consignments in other than that there's not going to be... Saturday night could be a little crowded he hopes. He said again twice a month.

Mrs. Rector said he would be limited to the number of people allowed in there by the state fire marshal by capacity.

John Reed said yes ma'am.

The President said we have a motion and second on the floor any other discussion. He said this is a motion just for the amendment at this point.

Ascertaining there was no other discussion a vote was taken and unanimously carried.

The President said now he asks the Board's wishes on how to proceed.

Jeff Valiant made a motion to give a positive recommendation to the County Commissioners for PC-R-17-13 as amended. The second was made by Bob Johnson and unanimously carried.

The President said this will go to the County Commissioner's on October 10, 2017 at 4:00 p.m. here in this meeting room for final approval.

PP-17-14 – Baywater at Berkshire Subdivision by Maken Corp., Danny Ubelhor, Pres. OWNER: Same. 22.64 acres located on the S side of Oak Grove Rd. approximately 0' S of the intersection formed by Oak Grove Rd. & Park Blvd., Boon Twp. & Ohio Twp. *Complete legal on file. Advertised in the Standard August 31, 2017.*

The President said please state your name for the record please.

Jim Morley Jr., project engineer.

The President said and Danny Ubelhor is still present.

The President called for a staff report.

Mrs. Rector said she has the wrong one in front of her.

Jim Morley Jr. said that is because he skipped one.

The President said yes, he did skip one he's sorry about that. He said let's go ahead beings he called it.

Mrs. Rector said the notice was mailed with the rezoning we still have the one missing card but it's in order. She said you just voted to change the zoning from "M-2" to "R-1" leaving the remainder of the subdivision out there an "M-2". She said there is no flood plain and there are 42 proposed lots. She said the Commissioner's did approve the street plans today. She said the Drainage Board approved the drainage plans. She said Newburgh has capacity for sewer and Indiana American has capacity for the water. She said it is proposed 39 Residential lots with 3 Industrial lots. She said they are requesting a waiver from the Subdivision Control Ordinance to allow 5' wide drainage easements on some lots instead of 6'. She said the easement will be a total of 12' but will be on shared lot lines with 7' on one side and 5' on the others so the total comes out the same and this was approved by the Drainage Board and the County Surveyor today. She said the subdivision approval would be contingent upon the approval of the zoning approval by the County Commissioners. She said lot 40 that fronts on Prospect Dr. and Oak Grove Rd. the County Engineer said he will not allow access of an industrial lot onto Oak Grove Rd. She said the access will have to come off of Prospect Dr.

The President said so 40 is an industrial lot as well.

Mrs. Rector said yes the big lots 40, 41, and 42 are the industrial lots the rest are residential.

The President asked if they had anything to add to the staff report. Having nothing to add he called for questions from the Board and for remonstrators. He asked if there was any elevation change between the Industrial Park and the...

Jim Morley Jr. said there is a ditch there.

The President said he knew that came out there because he knew we had some drainage problems.

Jim Morley Jr. said there is a ditch basically all the way around the south side of the residential area and so it creates a nice buffer between the residential area and the industrial area. He said so the commercial lots, the kind of long narrow one south of the project, is a left over piece of ground that is just going to be transferred to the adjoiner and there is another one that fronts over on Prospect which he believes the County is interested in purchasing that lot. He said then the large piece that accesses Prospect that Sherri referred to, we haven't quite figured out what the

future for is for that lot but we had to include all of that ground in the plat so we didn't have a little left over piece of property. He said that is why it all shows up in this plat.

The President said is he seeing that right that there is only 38' of frontage of that lot.

Mrs. Rector said what lot.

The President said lot 40. He said don't they need 50' down there.

Mrs. Rector said yes you are going to have to scoot that over to 50' every lot has to have 50'.

Jim Morley Jr. said we can make that change. He said we were trying to give the County as much road frontage as possible. He said it is a nice piece of property it's a nice project and it will fit well with the community. He said that's a growing area as you all know. He said Friedman Park will bring in lots of folks as you know so more kids for schools. He said we are looking forward to its... a nice single family home project.

Ascertaining there were no more questions the President requested a motion from the Board.

Bob Johnson made a motion to approve PP-17-14 conditioned upon the adjustment to the road frontage and the rezoning being approved by the Commissioners. The second was made by Jeff Willis and carried unanimously.

PRIMARY PLATS:

PP-17-13 – North Warrick Industrial Park Sec. 2 by Delta Properties, LLC, Evan Beck, Mbr. 19.58 acres located on the S side of Industrial Park Dr. approximately 1,500' E of the intersection formed by Industrial Park Dr. & Old SR 57 being a subdivision of Lot 8 in Warrick Industrial Park Sec. 1, Greer Twp. *Advertised in the Standard August 31, 2017.*

Jim Morley Jr., project engineer, and Evan Beck, owner were present.

The President called for a staff report.

Mrs. Rector said we are missing one green card from Warrick County Redevelopment Commission but we do have the white pay receipt. The zoning is "M-2" General Industrial and there is no flood plain and there will be 2 lots. She said the Commissioners approved the request for no road improvements for Industrial Park Dr. She said the Drainage Board approved the request for no drainage improvements. She said Elberfeld has the capacity for water and sewer. She said it is a proposed two lot subdivision. Pepsi is located on the lot already and this will add an additional building site.

The President asked if there was anything to add to the staff report.

Jim Morley Jr. said the owner, Pepsi, has quit a bit of the lot left over so they wanted an opportunity to put a second building on the same fifteen acres.

The President said a new owner or they don't know yet.

Jim Morley Jr. said they will probably continue to own it they own most of their properties.

The President asked if there were any more questions from the Board Members.

Jeff Valiant asked what type of building is it going to be just another...

Jim Morley Jr. said some type of Industrial... some type for the Industrial Park.

The President said just a shell.

Jim Morley Jr. said there is no second building planned right now this just creates the building site. He said it is just a lot of grass to mow forever so they figured they might as well do something with it.

The President asked if there are any remonstrators for or against this project.

Ascertaining there weren't any he requested a motion from the Board.

Bob Johnson made a motion to approve PP-17-13. The second was made by Jeff Willis and carried unanimously. Jeff Valiant wanted it noted that with his affiliation to Elberfeld he abstained from voting.

OTHER BUSINESS:

Complaint- Owners: William & Patricia Swingle. Possible junk/salvage yard at 6788 Holly Dr.
Con't from August 14, 2017.

Mrs. Rector said this is the one that she sent out to everyone to go and take pictures for us and no one volunteered.

The President said someone did because we have pictures.

Mrs. Rector said the Health Department did. She said the Health Department went and reviewed everything and the girl over there did some research. She said the house is vacant and it is in mortgage foreclosure with 5/3 Mortgage Company. She said then they filed for bankruptcy. She said the notice of bankruptcy under federal cause number caused an automatic stay of the foreclosure proceeding. She said bankruptcy should be done by now which means someone probably forgot to notify the court and 5/3.

Morrie Doll said when you file bankruptcy it stops any administrative actions to government agencies to clean up properties but the banks are usually just johnny on the spot for filing something called relief from stay which they actually say to the federal court hey look at this property and its dilapidated condition and they have no equity and we would like to have the court release us from the stay application so we can go ahead and proceed with the foreclosure. He said as big as an organization as 5/3 Mortgage is he can't see that they haven't done that. He said if you want to give me the cause number I can do a little quick research it is 17-. He said oh they were in a thirteen that is a wager and reorganization that is still a bankruptcy but...

Mrs. Rector said you need to vote if it is in a zoning violation of a junk salvage yard. She said the Health Department isn't going to do anything because no one lives in it and the only time they can do something is when someone is living in it. She said then they can condemn it and when they get it cleaned back up then they can get back in it.

The President said it should still be condemned even if no one is living in it so no one can go into it. He said it is a mess.

Bob Johnson said it is a health hazard.

Mrs. Rector said sure it is.

The President said but it isn't a junk yard.

Mrs. Rector said that is what she was saying to Morrie...

The President said but it is a nuisance.

Morrie Doll said he doubts it is a Chapter 13 that would be Bill Musgrave but obviously no one is making payments on the Chapter 13 plan so it will be either Stacy Whistle which is Chapter 7 trustee or Richard LaPlant who is the other Chapter 7 trustee. He said it will be one of those three people

Mrs. Rector asked him if he could write them a letter and tell them we have this and send it to them...

Morrie Doll said he wants to send one letter to everybody is what he really wants to do.

Mrs. Rector said and give them like thirty days... what do you want to say.

Morrie Doll said we would like to have a response back by the next meeting.

The President said there you go as to our jurisdiction, theirs, or whatever.

Morrie Doll said on who is going to be responsible for this.

Mrs. Rector said she will email him all of this tomorrow.

Jeff Willis asked where this place is.

The President said Holly Dr.

Bob Johnson asked where that is.

Mrs. Rector said it is off of Sharon Rd she thinks. She said we don't have to worry about anyone drowning in the pool because it has a hole in it.

The President said oh the pool does.

Mrs. Rector responded yes the lining does.

The President asked if we had a motion...

Mrs. Rector said to find it in violation for Morrie to...

Morrie Doll said to investigate and report back next month.

Bill Byers made a motion to have Morrie investigate and report back next month. The second was made by Jeff Valiant and carried unanimously.

ATTORNEY BUSINESS:

Pecan Mobile Home Park- Continued from June 12, 2017. Division of property.

Morrie Doll said contrary to popular belief he has not heard a word from either party he knows they are bad mouthing him saying he won't return their calls. He said have you ever met a lawyer who wouldn't talk. He said that just isn't clearly true and it's not. He said he has no unanswered phone calls from either party and no unanswered e-mails for the record from either party.

Mrs. Rector said they did call our office today, the people who own the property by the highway not the mobile home park. She said they talked to Kim, wanting to come in for a site review and said the mobile home people won't talk to them. She said I told Kim to call them back and tell them there is no reason to come in for a site review because they can't build anything there and that our attorney has already told them several times that they need to take it to court.

The President said legal action yeah.

Mrs. Rector said yes and handles it themselves. She said did you talk to them Kim.

Kim Kaiser said yes.

Morrie Doll said and he bets that they were just really happy.

Kim Kaiser said yes they were.

Mrs. Rector said that Morrie has been telling them that for months though.

Morrie Doll said when he took it over the parties who came in here had never once spoken to the mobile home park people. He said this is where they started was here.

EXECUTIVE DIRECTOR BUSINESS:

Discussion: Zoning Inspections

Mrs. Rector asked what she is supposed to do since we have no zoning inspector anymore and like she had said she sent out an e-mail for someone to please go out and she received no response back from anyone.

The President said did you put anything in the budget for one.

Mrs. Rector said no because...

The President said he knows because they were...

Mrs. Rector said she was going to and she talked to Bob Johnson and Dan Saylor today before the Commissioners meeting and the Council she thinks they mentioned it to them and that just... to get someone to do inspections for different departments so... She said she guesses that she wants to know what to do in the meantime and she did talk to Attorney Glass after the Commissioners meeting. She said he did stop by the office and he is drafting up ordinances for weed and grass ordinances like we used to have. She said he is also drafting up a nuisance ordinance. She said the question is going to be... well she thinks at that time it will fall on the Commissioners, who is going to enforce these types of actions so in the meantime she doesn't know when he is going to get this done so if she sends out a thing someone is going to have to help us out.

The President said well absolutely you need someone to go out and look at it.

Mrs. Rector said that Guy Gentry went out the other day and looked at buildings that we had the last time that they were on the property line at the last meeting and they needed moved and they are gone.

The President said he knows that Bob Johnson has been out before too but that isn't this Boards position or do we necessarily have the ability to do it. He said that he doesn't believe it is the staff's either. He said we used to have a position and it was basically taken away from us. He said his view point is we go back to the Council and say that we need a person in there to do that. He said at least we are trying to fund it and if the Commissioners want to come up with another way to do it that is wonderful too. He said there needs to be an inspector or somebody who is able to go out and do this leg work that needs to be done.

Bob Johnson said Sherri let's think about you, myself, and Dan Saylor getting together. He said we also need someone part time to go out and do those inspections so maybe we can combine this into one and get it done.

Mrs. Rector said if you guys can just work with us for the rest of the year until Todd Glass gets that nuisance ordinance. She said she told him today not to put it on our office to be responsible for the inspections to keep us all out of it. She said maybe if they come up with this ordinance we can all go to the Council and let them know we need this person. She said she does need their help when we get the complaints in.

The President said maybe we should back it up and let them complain to someone else.

Bob Johnson said we need some type of job description that covers both entities and we can go from there.

Mrs. Rector said there was a description in the Building Inspector's contract but she doesn't know if it is in there any longer or not.

Bob Johnson said they do not have one for what they need.

Mrs. Rector said no you don't.

Bob Johnson said this needs to be a combined position.

Mrs. Rector said she was just saying that she needs their help when she sends these things out and whoever is the closest or lives by there or can get by there. She said it isn't like we have them every month or anything.

Jeff Valiant said it's only like every other month or so.

Jeff Willis said you need pictures of the one where the lake is. He said that is where my neighbors fish. He said he drove by there because that was in his neighborhood

Mrs. Rector said it is gone.

The President said the only thing there that he got a picture of was the brown spot on the ground where the building had been because it was already gone and there was a trailer parked on top of the brown spot.

Discussion: Number of unattached accessory buildings allowed on property without residence.

Mrs. Rector said that used to you couldn't have an unattached accessory without a principle building, a dwelling. She said it got to where people were buying these five acre tracts in these subdivision and they wanted to put up these accessory buildings to put their mowing equipment and things like that in them so they could take care of the property but weren't ready to build a home yet. She said we changed the ordinance that reads in no case shall there be more than one residential dwelling and its accessory structure on one lot and in no case shall there be an accessory structure on a property without the dwelling in a residentially zoned district unless a variance is obtained. She said in other words it can be Agricultural and you can have one up but if it is Residential you cannot. She said now we are getting to the point where people want to pop up two or three, four accessory buildings and we don't have any way of controlling when a house goes there and asked Morrie if he read this as a single building.

Morrie Doll said he thinks it is of a single description an accessory building not buildings.

Mrs. Rector said that is what she was thinking of structure but she wanted to make sure before she started it for the staff to know before we started saying no you can only have one.

Morrie Doll said you can get a motion from the Board for the concision that this reads that it is a single structure.

Jeff Willis asked if that affected your barns.

Mrs. Rector said farming is exempt if that is what you are meaning like agricultural buildings they are exempt for farming.

Bob Johnson said on my property I have a barn and a mini barn.

Mrs. Rector said you can because you have your house there. She said this is saying that you can put up one building before your house is built, used to you couldn't do that you had to have a house there.

Jeff Valiant said do you have a bunch like that.

Mrs. Rector said no we had someone in the other day wanting four storage buildings and she said she didn't think the intent of the ordinance means that.

Morrie Doll said it is single and that is in a residential zoned district.

Mrs. Rector said no it is agricultural zoned district and in a residential zoned district you can't have any before building a house. She said it is only agriculture to help the bigger lots out. She said do you all agree it means single.

The President said agriculture subdivision or just an agriculture lot.

Mrs. Rector said either or.

The President asked how you know if farming is exempt, how many acres you need to be a farm.

Mrs. Rector said you have to bring, and this Board voted on it, because used to everyone that owned a pig thought they were a farmer so this Board ruled that you had to bring in a copy of their schedule "F" to show that you make a living by farming. She said we don't keep it we just visually see it and give it back to them and then we have an agricultural sign off that we put the location and what the building is going to be used for and we file that so we will know.

The President said if they go straight to the Building Department do they send them back over to you.

Mrs. Rector said yes they do.

The President said so there is cooperation there then. He asked what do you need then.

Mrs. Rector said that you agree that it means single.

Bob Johnson said let me throw out a hypothetical at you. He said say he bought a piece of property in order to put a house on it. He said he could put a pole barn on it real quick and live

in the pole barn could he put that on there until his house was built.

Mrs. Rector said with a variance that when he came in to get his house permit. She said you have to build the part of the pole barn to residential code that you are going to live in. She said that happens a lot and they go before the Board of Zoning Appeal and they tell them they have so many days to remove like the stove or whatever because they can't use them as another residence after the new one gets built. She said so yes, we give variances for that people do that a lot of times. She said you can always if you need a second building for some reason you can always ask for a variance for that she just wants it to be clear for her and the girls in the office that it means one.

Jeff Willis said are they going to put them side by side or ten feet apart or different corners of the yard.

Mrs. Rector said they were going to be shelter picnic...

Molly Barnhill said they were going to be like little storage shelter buildings. She said it was a huge piece of property and it sounded like it was going to be fun for the whole family with all of their little buildings.

Mrs. Rector said it is probably little cabins is what it was going to be. She said do we need to vote.

Morrie Doll said it can be the consent of the Board or vote. He said the word is singular it says accessory structure not structures.

Mrs. Rector said that was the way she looked at it too she just wanted to make it clear.

Bill Byers said put a one in front of it.

Mrs. Rector said if you put it on record that it means single she won't have to do an ordinance and advertise it and all of that stuff.

Jeff Valiant made a motion to let it show that the wording in there means singular one accessory structure. The second was made by Bob Johnson and unanimously carried.

The President said does that one need to stay plural or should it be...

Mrs. Rector said you can have accessory structures if you have a house, you can have more than one like Bob has two. She said if you have a house there you can have two or three as long as

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you don't cover too much of the lot and you meet the 10' and have spaces this is just allowing one on the lot with a residence

The President said without a residence only one structure.

Mrs. Rector said yes.

Discussion: Primary Plat approvals with conditions.

Mrs. Rector said she was approached by Commissioner Johnson. She said we talked and also Commissioner Saylor, they wanted to know if we could put conditions on primary plat approvals when subdivisions are going up along main thoroughfares of the county and by parks and things where you maybe have a buffer like trees or a buffer of some kind. She said or put conditions where everybody's fence needs to be white or consistent or things like that she didn't want to mention any places. She said she has asked Morrie and he's looked up the code and I made copies of it for everybody. She said she sent an e-mail to Morrie and he's looked up some things and he can explain it to you and she thinks it will take some thought if it is possible he will have to tell you that. She said like how you decide which ones need it and which ones don't how you can pick certain areas so Morrie is going to give you what the code...

Morrie Doll said we already have in our ordinance that says that you can have conditions for the approval of a plat but what Sherri has given to you is a copy of the state statute that says you can make it conditional to approve or adopt a rezoning proposal, a primary plat, a vacation of a plat, an approval of an application for a special exception, special use, contingent use, conditional use, variances you can condition anything that we do. He said they can either offer us a condition would you approve this if we had a limited "C-4", a conditional "C-4" or we can say we like your proposal but we are really concerned about everyone being around being residential so your "C-4" should have a limited use it should only be for an auction barn or an archery center, those are completely proper you can do those. He said there are some things you cannot do, we can condition them or you can have them time limited... He said they have to be in writing, they have to be recorded if they are going to be enforceable, they can expire on their own, and you can amend them at a later date if you need to. He said there are some things you cannot do so if you will turn to the third page there is a list of types of special exception or conditions that you cannot include. He said they start on the third page on the right hand column; the following types of conditions as authorized by this chapter are not considered commitments and are not subject to this subsection. He said you can't make subdivisions restrictive covenants a condition for approving the plat. He said they go on and on there is a series of them here they are generally things you wouldn't do anyway. He said where he sees us getting into trouble is how do we have uniformity. He said if a subdivision comes in do we say we want white fences around your subdivision because you are in a part of the county that a lot of visitors come to and we would like to have this really look nice but down the road another subdivision comes forward and they want a plat to be approved but we don't require them to have white fences around it. He said we have all been to planned developments where we have seen what conditions look like Hilton Head for example. He said at Hilton Head no one has a sign taller than shoulder height and all of

the utilities are buried and now with the hurricane that makes sense. He said it can be done but I'm worried we will get a lot of push back if we start doing this.

Mrs. Rector said we do it with a PUD the landscaping, buffer the ordinance already tells you to do that.

Morrie Doll said we just did this by Rabbit Run.

Jeff Willis said we do it occasionally if it makes sense like if there is a commercial building going up next to a Residential... we work with them to make people who are there less unhappy.

Morrie Doll said what Sherri and he are saying is maybe we need to amend the ordinance and tighten it up to describe circumstances that are permitted to be used because what he is worried about is we require it or we are not going to approve your plat and they don't agree. He said then the plat doesn't get approved are we going to get sued for being arbitrary and capricious because we don't have any criteria to determine when we can require it and when we can't require it. He said he thinks we probably will and we might not win that law suit. He said where if our ordinance says if there are these three conditions or these five circumstances exist or what have you then privacy conditions could be imposed or this, that, or what have you. He said he's positive we can find some of these in other subdivision ordinances around the state. He said he is positive Columbus, IN probably has them; positive Indianapolis, IN has them. He said Evansville might even have them he hasn't looked. He said all he is saying is that if we are going to do conditional approvals of plat, rezoning, and etc. we should have criteria in our ordinance on what triggers the ability to do that.

Bob Johnson said he agrees we have to make it as black and white as possible where we are consistent.

Morrie Doll said a one sentence line we have sentence that says you can approve a subdivision plat with or without conditions. He said in effect that is about what it says and he is really worried that we are going to get sued and we are going to lose. He asked how does the applicant have the ability to know what the regulation is and how it will be applied to his project. He said then you have a due process problem. He said think about it and if you want you can have Sherri and him do some research of some of the other communities that have an ordinance where they trigger the ability to put conditions in to the approval of plats and the rezones and we can give them to you and see if you like them or you don't or you might want something different.

Jeff Willis said going back to the conditions they want or are asking about, let's take fences since he is familiar with that, you put up white fences in these neighborhoods, white polyvinyl fences, then we get a big storm and half of them are going to get blown out no matter what. He said Miami Dade County requires about \$100 a foot polyvinyl fence which might not blow in our storms but most people aren't going to pay \$100 a foot for a six foot privacy white fence.

Bob Johnson said and that wasn't the intention here he thinks that we are just looking for some type of barrier. He said Sherri just threw out...

Mrs. Rector said that she just threw out fence or trees.

Morrie Doll said a fence may be too specific maybe we just need to say privacy barrier.

Mrs. Rector said what she meant was not the home owner but the developer putting it in like an out lot, maintenance, or landscaping.

Jeff Willis said there was a fence that was put up when they widened SR 261 across from Castle it was a wood fence. He said the just tore it down, it had been up a one and a half years maybe, and they tore it down to put a polyvinyl fence. He said are we going to allow the home owners if they want a polyvinyl fence if we mandate a wooden fence.

Morrie Doll said that is why you want to talk about barriers and let them make suggestions on what the barriers could be and we could approve it either as a berm, a tree line, a fence whether it is polyvinyl or wooden but you would talk about it in the context of opaque or semi opaque of some sort that would shelter the property from the roadway. He said let me give you an example the Target store off of the Lloyd Expressway on the east side of Evansville noticed the berm, the trees, and the fence behind it. He said that was a negotiated condition of the approval of that zoning for the Target store to go in that neighborhood. He said that is what was worked out as a condition for approving that and is exactly what we are talking about. He said it is a combination of many different things which the purpose of which was no one wanted to look at the back of a concrete block building.

Mrs. Rector said if you look at where she lives you go down Anderson Road and you have the big berm then you come into the golf course and you have the berm going with the grasses and stuff you barely see our houses in there. She said she didn't mean just a fence she just meant something like that.

Jeff Willis said he understands but when he thinks of fences he always thinks of the problems with them, polyvinyl going to have this wood; is going to have that; and trees are going to blow over. When he goes out and looks at the ground he helps the customer to choose which one is appropriate.

Mrs. Rector said do you remember years ago whenever Mansfield Subdivision and them went in at Lincoln and Epworth and all of those people across the street and all of the people in the subdivision that was their main gripe were fences being put up and they had to look at them because nobody's would be matching and the maintenance. She said it wasn't really about the houses it was about the barrier around them and at that time, she thought it was Les Shively that was their attorney, stated we couldn't make it a condition.

Bob Johnson said so when discussing this are we going to take each plat individually or where it is located within the county or is this possibly something that the State does and every house in the state has to meet those conditions.

Morrie Doll said no, no that is way too broad.

Mrs. Rector said this is just about changing the ordinance to allow the Planning Commission if they feel in certain areas if there needs to be a berm put in, or some trees.

Morrie Doll said no, on a particular project by project basis. He said if a developer comes in and for some reason that privacy may be important here, then the Board in order to approve the plat for that subdivision could say to approve it you have to put a berm on the west side of it. He said a six foot tall berm with a combination of trees, fence, and berm that will give some privacy on the west side of it. He said he doesn't know what those facts would be but that would be an example of conditional approval.

The President said and there isn't anything in the ordinance at this time.

Mrs. Rector said you can approve with conditions but it doesn't say what.

Morrie Doll said it doesn't say why, when, or how.

The President said he doesn't know that they can specify that he kind of likes it vague.

Morrie Doll said that courts don't like it vague.

The President said it usually at the petitioner's request to do it after we lean on them a little bit and say would you be in acceptance to do that and they will usually say yes.

Morrie Doll said that is the problem.

Mrs. Rector said she was thinking about certain thoroughfares within the county. She said we have a thorough fare plan in our subdivision ordinance we could somehow... she doesn't know major roadways in the county she doesn't know what ones are the busiest.

The President said he thinks we are talking a little bit different thing and he is fine with earmarking certain areas but he still thinks we need to leave it open as to how that buffer is... a berm may not be the answer maybe the fence is the answer.

Bob Johnson said but we do need some specifics in the ordinance.

Jeff Valiant said you are looking for certain criteria.

The President said if it's on this thoroughfare then we can do that.

Bob Johnson said recreational area, playground, park or whatever it may be you may want to put a barrier there.

Jeff Valiant said like you are putting in an auction house next to a residential area whatever it may be.

Mrs. Rector said that a lot of the commercial requires fencing anyway and no outside storage etc. so we are talking mainly residential subdivisions.

Jeff Valiant said he agrees that a few items with general criteria he doesn't want to open a can of worms.

The President said you don't want to lock your hands either.

Jeff Valiant said he doesn't think you want to either.

Morrie Doll said but you want more than a sentence and that is what we have right now subdivisions may be approved by conditions or with conditions.

Jeff Willis said it is when, where, how, and why.

Mrs. Rector said yes she wouldn't have any idea and when they come into site review before they file the plat she needs some kind of guidance to say this is in here instead of slamming everybody at a public hearing by saying by the way we want this.

Jeff Valiant said that certain items of criteria would be nice.

Everyone was in agreement.

Morrie Doll said would you like for us to do some research and bring you back some suggested language.

Everyone was in agreement.

Morrie Doll said ok he and Sherri will do that.

Jeff Willis thinks that Columbus is a higher... because they are kind of a planned...

Mrs. Rector said yes they are, that their zoning ordinance is up there. She said they are way bigger than we are.

Bob Johnson said we don't want to get crazy we just want some protection.

Morrie Doll said he thinks they will find several different and some will be more detailed than others and some will be more vague but he doesn't think anybody's will be as vague as ours which says one sentence and that is why he is afraid some judge is going to say that is not good enough. He said there has to be a measureable quantitative way to evaluate whether this was a circumstance whether you could require a condition or not.

Jeff Willis said his other concern is if someone comes in and they have remonstrators if we can put more conditions on them or if no one comes in but they still meet this criteria will they still be required to put the barrier on the outside.

Morrie Doll said they are not mandated.

Bob Johnson said you will have to look at it as a case by case basis.

Jeff Willis said we do sidewalks but they are always asking to have them waived.

Morrie Doll said or they are asking us to waive them on one side of the street. He said that happens a lot too.

Mrs. Rector said you have to watch also because everything that you put on the developer adds onto the home owner, eventually it will go into the cost of the lot.

Jeff Willis said we are talking about trees and berms and eventually all of these things are going to need maintenance and once the developer builds everything he is out of it. He said then who comes in and maintains the berm or replaces the trees or fixes the fences.

Mrs. Rector said yes because of the subdivisions with the smaller homes does not have private restrictions or home owners associations they just don't.

The President said so those restrictions there then become a burden to somebody down the road that's what happens to the schools all of the time the parent's group says let's build this beautiful garden while their kids are in the eighth grade and they do that then they go to the high school and they forget it then it looks bad because no one is taking care of it and we don't have enough maintenance people to do it so it would be the same scenario there.

Mrs. Rector said they will look at some other counties and see what they can find.

The President said the only other thing was the building and it wasn't on the agenda because the building had been removed so it is done. He said does anybody have anything else for the good of the commission.

Being no other business the meeting adjourned at 7:15 p.m. with a motion from Jeff Valiant, seconded by Bob Johnson and unanimously carried.

Guy Gentry, President

ATTEST:

Sherri Rector, Executive Director